

Remarks/Arguments:

Claims 6-14, 28, 52, and 54-71 are pending in the above-identified application. Claims 1-5, 15-27, 29-51, and 53 have been previously canceled. By the present Amendment, claims 6-14, 28, 52, and 54-59 are withdrawn from consideration. Thus, claims 60-71 are presented for consideration. By the present Amendment, claims 60 and 63 are amended.

Rejection under 35 U.S.C. § 112, Second Paragraph

Claim 60 is rejected under 35 U.S.C. § 112, second paragraph, for including a recitation of "the health control program including all or part of exercise indices, and exercise menu, and health control indices of the user" By the present Amendment, Applicant amends this recitation to recite instead "the health control program including **one or more of exercise indices and health control indices** of the user" (emphasis added). Favorable reconsideration is respectfully requested.

Rejections under 35 U.S.C. § 102(b)

Pending claims 60-71 are rejected under 35 U.S.C. § 102(b) for allegedly being anticipated by U.S. Patent No. 6,478,736 to Mault. It is noted that Mault issued November 12, 2002. The publication date of Mault does not precede the filing date of the above-identified application by more than one year. Thus, Mault is not a proper basis for rejection of claims 60-71 under 35 U.S.C. § 102(b), as indicated in the Office Action. Thus, Applicant respectfully asserts that the rejection of claims 60-71 under 35 U.S.C. § 102(b) is improper and requests it be withdrawn.

Additionally, Applicant notes that the above-identified application was filed on September 10, 2003 and is a divisional application of U.S. Patent Application No. 10/057,669 (herein "the '669 Application"), which was filed on January 25, 2002. The publication date of Mault is, therefore, subsequent to the filing date of the '669 Application. Thus, Applicants respectfully assert that Mault is not a prior-art publication under 35 U.S.C. § 102(a) either.

To expedite prosecution, by the present Amendment, Applicant amends claim 60 to clarify features of the claim. It is respectfully asserted that Mault does not disclose or suggest the following features of amended claim 60:

generating a health control program in a server . . . , the health control program including one or more of exercise indices and health control indices of the user of the vital signs processing apparatus . . . the server being external to the vital signs processing apparatus . . .

wherein the health control program directs an exercise routine of the user, the exercise indices include at least one target value for at least one vital sign of the user during exercise, and the health control indices include information on at least one target calorie consumption value of the user for a respective at least one predetermined time unit.

These features can be found in the originally-filed Application on page 58, lines 9-21. No new matter has been added.

The Office Action cites column 8, line 32 through column 12, line 40 and FIGS. 7A-12C and FIG. 15 of Mault as disclosing the "exercise indices" and "health control indices" and associated features of claim 60. Although it is not clear what specific features of Mault the Office Action considers as disclosing the "exercise indices" and "health control indices" of claim 60, Applicants respectfully contend that portions of Mault cited in the Office Action and discussed below do not disclose all of the above-quoted features of claim 60.

Mault describes a portable computing device 52. The user of portable computing device 52 uses device 52 (1) to enter, via a menu system, identifications of foods consumed so that device 53 can track calories ingested and (2) to enter activity levels so that device 52 can compute calories expended. (See Mault, column 7, lines 25-44.) Device 52 may receive activity levels from an activity sensor 60, which may be an accelerometer, thereby relieving the user from the necessity of inputting activity information. (See Mault, column 7, lines 51-54 and column 9, lines 33-37.) Device 52 compares calories ingested by the user to calories expended by the user to calculate a calorie balance for the user. (See Mault, column 6, lines 48-51 and column 9, lines 13-24.) Device 52 provides feedback to the user regarding the user's calorie balance. (See Mault, column 6, lines 48-51.) Mault also describes that the user may also set "health related goals, such as body fat percentage, RMR, or other physiological parameters such as resting heart rate" using device 52. (See Mault, column 6, lines 65-67.)

Portable electronic device 52 of Mault transmits the calorie intake and expenditure information, as well as "health and weight status" of the user, to a remote computer system 80 which is operated by an expert who provides feedback to the user regarding the user's caloric

intake and expenditure. (See Mault, column 10, lines 31-39.) Mault also discloses that an exercise program may be devised and displayed on an interactive television (also referred to in Mault as an "entertainment device"). (See Mault, column 11, lines 36-45.) The exercise program is based on the user's "demographic data (age, gender), weight, and previous levels of activity." (See Mault, column 11, lines 36-45.) Although not entirely clear from the description in Mault, it appears that device 52 generates the exercise program. (See Mault, column 11, lines 24-45.)

Mault does not disclose or suggest the "**exercise indices**" that are recited in the above-quoted portion of claim 60. As recited in the above-quoted portion of claim 60, the "exercise indices" include "at least one target value for at least one vital sign of the user during exercise." As noted above, in Mault, the user of device 52 may input "health related goals" such as a resting heart rate into device 52. The user may also input physical activity information. Neither a resting heart rate nor physical activity information is a "**target** value for at least one vital sign of the user **during exercise**" as defined in amended claim 60. This **target value** is a value to be achieved during exercise (see our specification page 58, line 16 through page 59, line 4.) (Emphasis added.) Thus, the resting heart rate and the physical activity information input by the user in Mault does not disclose or suggest the "exercise indices," recited in claim 60.

Further, in Mault, the user inputs the resting heart rate and activity levels into device 52, which is separate from the remote computer system 80 described therein. (Mault also describes that device 52 may sense the physical activity of the user.) Mault does not appear to describe that the inputted resting heart rate or the inputted (or sensed) physical activity information is part of a health control program generated in a server external to a vital signs processing apparatus. The external server recited in amended claim 60 is in, for example, a doctor's office and generates a health control program that includes a target value for a vital sign during exercise. Thus, Applicant respectfully asserts that the inputting of a resting heart rate and physical activity information into device 52 does not disclose or suggest "generating a health control program in a server . . . , the health control program including one or more of exercise indices . . . **the server being external to the vital signs processing apparatus**" (emphasis added), as recited in the above-quoted portion of claim 60.

Mault also does not disclose or suggest the "**health control indices**" that are recited in the above-quoted portion of claim 60. As recited in the above-quoted portion of claim 60, the

"health control indices" include "information on at least one target calorie consumption value of the user for a respective at least one predetermined time unit." As noted above, Mault describes comparing expended calories to ingested calories in device 52. The ingested calories are inputted by the user into device 52. The inputted calorie information, however, is not "information on at least one **target** calorie consumption value of the user for a respective at least one predetermined time unit" as defined in amended claim 60. This **target value** is a value to be achieved over a predetermined time. (see our specification page 58, line 16 through page 59, line 4.) (Emphasis added.) Thus, the calorie consumption data input by the user in Mault does not disclose or suggest the "health control indices" recited in claim 60.

Further, in Mault, the user of device 52 inputs calorie consumption information into device 52. Device 52 may then transmit the calorie consumption information to remote computer system 80. Mault does not describe that the inputted calorie consumption data is part of a health control program generated in a server external to a vital signs processing apparatus. The external server recited in amended claim 60 is in, for example, a doctor's office and generates a health control program that includes a target value for calorie consumption. Thus, Applicant respectfully asserts that the inputting of calorie consumption data into device 52 does not disclose or suggest "generating a health control program in a server . . . , the health control program including one or more of . . . health control indices . . . **the server being external to the vital signs processing apparatus**" (emphasis added), as recited in the above-quoted portion of claim 60.

Finally, as noted above, Mault describes that device 52 transmits the calorie intake and expenditure information, as well as other "health and weight status" of the user, to a remote computer system 80 which is operated by an expert who provides feedback to the user regarding the user's caloric intake and expenditure. Mault does not describe that the feedback provided by the expert or the exercise program include "one or more of exercise indices and health control indices," as required by claim 60. Mault also describes the generation of an exercise program (presumably in device 52) that is based on the user's "demographic data (age, gender), weight, and previous levels of activity." As noted above, the exercise program appears to be generated in device 52, not in a "server being external to the vital signs processing apparatus," as required by amended claim 60. Thus, Applicant respectfully asserts that the feedback and the exercise program of Mault do not disclose or suggest the above-quoted features of claim 60.

In view of the foregoing, Applicant respectfully asserts that Mault does not disclose or suggest all of the above-quoted features of claim 60. Withdrawal of the rejection and allowance of the claim are respectfully requested.

Claims 61-71 depend from claim 60 and, therefore, include all of the limitations of claim 60. By the present Amendment, Applicant amends claim 63 to clarify the features of the claim. For at least the same reasons as discussed above, Applicant respectfully asserts that Mault does not disclose or suggest all of the features of claims 61-71. Withdrawal of the rejections and allowance of claims 61-71 are respectfully requested.

With regard to claim 61, there is recited a step of "**modifying the health control program** depending on the transmitted vital signs." (Emphasis added.) As discussed above, Mault does not disclose generating the health control program recited in claim 60 in an external server. For similar reasons, Applicant respectfully asserts that Mault does not disclose **modifying** the health control program recited in claims 60 and 61 in an external server. Even if one were to interpret the description in Mault relating to the exercise program generated in device 52 as disclosing the features of amended claim 60 relating to the generation of the health control program, Applicant asserts that Mault does not describe **modifying** such program depending upon transmitted vital signs. Thus, Applicant respectfully asserts that Mault does not disclose the features of claim 61. Favorable reconsideration is respectfully requested.

Appln. No.: 10/659,237
Amendment Dated March 27, 2008
Reply to Office Action of December 27, 2007

MTS-3302US1

Conclusion

In view of the amendments and arguments set forth above, Applicant respectfully asserts that the above-identified application is in condition for allowance, which action is respectfully requested.

Respectfully submitted,



Allan Ratner, Reg. No. 19,717
Attorney for Applicant

AR/PKZ/nm

Dated: March 27, 2008

P.O. Box 980
Valley Forge, PA 19482
(610) 407-0700

NM240794